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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,051	12/29/2004	Joachim Berg	5000.P0053US	5080
23474 7590 12/13/2007 FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1631			EXAMINER SPAHN, GAY	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/520,051	BERG, JOACHIM	
	Examiner	Art Unit	
	Gay Ann Spahn	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007 and 21 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,6,7,9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,8,11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>22 June 2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 22 June 2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

However, the one item of information listed in the "Non Patent Literature Documents" section has been lined through as not being considered because the "Chinese Patent Office Examination Report citing publication CN 2407790 Y with English translation of the description" because no publication date has been given as is required by 37 C.F.R. 1.98(b)(5). If Applicant desires the Chinese patent document cited in the Chinese Patent Office Examination Report to be considered by the examiner, then he should list the Chinese patent document in the "Foreign Patent Documents" section of an IDS.

Drawings

The "Replacement Sheets" of drawings were received on 21 September 2007. These drawings are not approved by the examiner because many of the examiners drawing objections have not been addressed and are being repeated as noted below.

The drawings are objected to because:

(1) Figs. 1 and 2, the arrows at the end of the lead lines leading from reference numerals/characters "3" and "3a" should be deleted as failing to comply with 37 CFR § 1.84(r)(1-3);

(2) Fig. 5, the arrows at the end of the lead line leading from reference numeral "7" should be deleted as failing to comply with 37 CFR § 1.84(r)(1-3);

(3) Fig. 6, the arrows at the end of the lead lines leading from reference numeral "8" should be deleted as failing to comply with 37 CFR § 1.84(r)(1-3) and there should only be one lead line;

(4) Figs. 8 and 9, if the entire figure is a "lighting object", the arrows at the end of the lead lines leading from reference numeral "12" is acceptable, but one of the lead lines in Fig. 8 should be deleted;

(5) the examiner notes that there are many instances of the use of direction arrows which has not been properly described in the specification (for instance in Fig. 22, the up-and-down direction double arrow has been labeled with the letter "S" and discussed in the specification, but Figs. 6, 10-20, 24, and 26 have directional arrows which have not been labeled and discussed in the specification);

(6) Fig. 8, if the bottom of the figure around reference numeral 15 is showing a cutaway view, then this should be explained in the specification and if the support unit (1g) is not made of metal, the metal cross-hatching symbol around the plug connection element (15) should be deleted;

(7) Figs. 15, 18, and 19, the bracket fails to "EMBRACE" the separated parts as required by 37 CFR 1.84(h)(1);

(8) Fig. 20, the solid and dashed line above the double-headed curved arrow is not understood and should be removed or else labeled and explained in the specification;

(9) Figs. 24 and 25, the arrows at the end of the lead lines leading from reference numerals "35" should be deleted as failing to comply with 37 CFR § 1.84(r)(1-3) and the lead line should be made to touch the pedestal; and

(10) Fig. 26, it is not understood where the support element (39) shown in Fig. 27 is in Fig. 26.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

- (1) reference characters "1a", "2a", "3a", "4a", and "5a" in Fig. 2;
- (2) reference characters "1b" and "3b" in Fig. 3a;
- (3) reference characters "1c" and "3c" in Fig. 3b;
- (4) reference characters "1d" and "3d" in Fig. 3c;
- (5) reference characters "1e" and "3e" in Fig. 3d;
- (6) reference characters "1f" and "3f" in Fig. 3e;
- (7) reference character "5i" in Fig. 13;
- (8) reference character "3k" in Fig. 14;
- (9) reference characters "4m" and "5m" in Fig. 22; and
- (10) reference character "3n" in Fig. 23.

The fact that the above reference characters may "correspond to like characters" does not mean that the reference characters themselves should not be discussed in the specification, particularly, if shown in the drawing figures. On page 11, line 13, after "units", Applicant should insert --1b, 1c, 1d, 1e, and 1f, respectively--. Other, similar changes should also be made for the remainder of the reference characters.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures

appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102 and 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DANYLIEKO (U.S. Patent No. 5,649,886).

As to claim 1, DANYLIEKO discloses a supporting device (2) for a person's back and head area,

with a back support section (12) and

with a head support section (32),

wherein a partial area of the back support section (12) has, at the level of shoulder blade areas of the person's back area, a support surface (surface between lateral indentations 28, 28) in a spinal column area, and

on both sides of the support surface, open areas (28, 28) which are configured in such a way that the support surface in the spinal column area is sufficiently narrow to support only the spinal column and the shoulder blade areas can move downward past the support surface without interference (see first sentence of Abstract).

In the alternative, if the open areas or lateral indentations 28, 28 are not narrow enough to support only the spinal column so that the shoulder blade areas can move downward past the support surface without interference, then in view of col. 3, lines 12-22 (i.e., "[v]ariations in the . . . profile of the shoulder cutout areas, . . . the width of the spinal support . . . may be incorporated into the present invention."), it certainly would have been obvious to make the lateral indentations deeper and the width of the spinal support smaller so as to support only the spinal column in order for the shoulder blade areas to move downward past the support surface without interference.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DANYLIEKO by narrowing the width of the spinal support in order that the shoulder blade areas of the user of the supporting device could move down past the support surface without interference and thereby strengthen the muscles of the user.

As to claim 3, DANYLIEKO discloses the supporting device of claim 1 as discussed above, and DANYLIEKO also discloses that the open areas (28, 28) are formed by laterally open recesses (28, 28) of the back support section (12).

As to claim 5, DANYLIEKO discloses the supporting device of claim 1 as discussed above, and DANYLIEKO also discloses that the back support section (12) and the head support section (32) are integrated in a rigid support unit (top portion of workout bench 2).

As to claim 8, DANYLIEKO discloses the supporting device of claim 1 as discussed above, and DANYLIEKO also discloses that the supporting device (2) is a home or workplace furniture item or leisure item (workout bench 2 is leisure item).

Claims 1, 3, 5, 8, 11 and 12 are rejected under 35 U.S.C. 102(a or e) as anticipated by FALBO, SR. ET AL. (U.S. Patent No. 6,557,196).

As to claim 1, FALBO, SR. ET AL. disclose a supporting device (10 in Fig. 3) for a person's back and head area,

with a back support section (52/54) and

with a head support section (28),

wherein a partial area of the back support section (52/54) has, at the level of shoulder blade areas of the person's back area, a support surface (upper surface of 52) in a spinal column area (52), and

on both sides of the support surface (upper surface of 52), open areas (60, 62) which are configured in such a way that the support surface (upper surface of 52) in the spinal column area (52) is sufficiently narrow to support only the spinal column and the shoulder blade areas can move downward past the support surface (upper surface of 52) without interference.

As to claim 3, FALBO, SR. ET AL. disclose the supporting device of claim 1 as discussed above, and FALBO, SR. ET AL. also disclose that the open areas (60, 62) are formed by laterally open recesses (60, 62) of the back support section (52/54).

As to claim 5, FALBO, SR. ET AL. disclose the supporting device of claim 1 as discussed above, and FALBO, SR. ET AL. also disclose that the back support section (52/54) and the head support section (28) are integrated in a rigid support unit (upper portion of 10).

As to claim 8, FALBO, SR. ET AL. disclose the supporting device of claim 1 as discussed above, and FALBO, SR. ET AL. also disclose that the supporting device (10) is a home or workplace furniture item or leisure item (10 is workplace furniture item).

As to claim 11, FALBO, SR. ET AL. disclose a supporting device (10 in Fig. 3) for a person's back and head area,

with a back support section (52/54) and

with a head support section (28),

wherein a partial area of the back support section (52/54) has, at the level of shoulder blade areas of the back area, a support surface (upper surface of 52) in a spinal column area (52), and

on both sides of the support surface (upper surface of 52), open areas (60, 62) which are configured in such a way that the shoulder blade areas can move downward past the support surface (upper surface of 52),

the open areas (60, 62) each having an upper edge (lower edge of 54) adjacent the head support section (28) and a lower edge (upper edge of 58) adjacent the back support section (52/54),

the lower edge (upper edge of 58) being substantially perpendicular to a longitudinal centerline of the back support section (52/54).

As to claim 12, FALBO, SR. ET AL. disclose the supporting device of claim 11 as discussed above, and FALBO, SR. ET AL. also disclose that the support surface (upper surface of 52) in the spinal column area (52) is sufficiently narrow to support only the spinal column and the shoulder blade areas can move downward past the support surface without interference.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as obvious over DANYLIEKO (U.S. Patent No. 5,649,886) in view of any one of FALBO, SR. ET AL. (U.S. Patent No. 6,557,196), CHANDLER (U.S. Patent No. 5,275,176), and CASTILLO (U.S. Patent No. 4,614,338).

As to claim 11, DANYLIEKO discloses a supporting device for a person's back and head area,

with a back support section (12) and

with a head support section (2),

wherein a partial area of the back support section (12) has, at the level of shoulder blade areas of the back area, a support surface (upper surface of 12) in a spinal column area (between 28, 28), and

on both sides of the support surface (upper surface of 12), open areas (28, 28) which are configured in such a way that the shoulder blade areas can move downward past the support surface (upper surface of 12), and

the open areas (28, 28) each having an upper edge (upper edge of 28, 28 by 6 in Fig. 3) adjacent the head support section (2) and a lower edge (lower edge of 28, 28) adjacent the back support section (12).

DANYLIEKO fails to explicitly disclose that the lower edge is substantially perpendicular to a longitudinal centerline of the back support section.

Any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO disclose a supporting device (10 in Fig. 3 of FALBO, SR. ET AL.; 10 in Fig. 2A and 2E of CHANDLER; and 80 in Fig. 1 of CASTILLO) having a head support section (28 of FALBO, SR. ET AL.; 24 of CHANDLER, and upper end of 80 of CASTILLO) and a back support section (52/54 of FALBO, SR. ET AL.; 16 of CHANDLER, and middle of 80 of CASTILLO) with open areas (60, 62 of FALBO, SR. ET AL.; areas when 28 and 26 are removed CHANDLER, and 82, 84 of CASTILLO), wherein the lower edge of the open

area (60, 62 of FALBO, SR. ET AL.; areas when 28 and 26 are removed CHANDLER, and 82, 84 of CASTILLO) is substantially perpendicular to a longitudinal centerline of the back support section (52/54 of FALBO, SR. ET AL.; 16 of CHANDLER, and middle of 80 of CASTILLO).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the supporting device of DANYLIEKO by making the lower edge of the open areas be substantially perpendicular to a longitudinal centerline of the back support section as taught by any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO in order to ensure enough room for shoulder blades and arms to clear the open areas.

As to claim 12, FALBO, SR. ET AL. in view of any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO disclose the supporting device of claim 11 as discussed above, and the resulting supporting device from the combination of FALBO, SR. ET AL. in view of any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO would have the support surface (upper surface of 12 of FALBO, SR. ET AL.) in the spinal column area (between 28, 28 of FALBO, SR. ET AL.) being sufficiently narrow to support only the spinal column so that the shoulder blade areas can move downwardly past the support surface (upper surface of 12 of FALBO, SR. ET AL.) without interference (see first sentence of Abstract and col. 3, lines 10-22 of FALBO, SR. ET AL.).

Response to Arguments

Applicant's arguments with respect to claims 1, 3, 5, 8, 11, and 12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on (571)-272-6777. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

^{GAS}
Gay Ann Spahn, Patent Examiner
November 27, 2007


RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER